



Memorandum

To: Mr. Arnold Fong - MIC:64

Date: June 12, 1995

From: Eric Eisenlauer

Subject: USB Holdings, Inc.

This is in response to your memo of May 8, 1995 to Mr. Richard Ochsner in which you request our opinion whether a change in ownership occurred on May 23, 1991 when two corporations, FPH (BVI) Ltd. (FPH) and First Pacific Bancshares Holdings Ltd. (FPBH), acquired control of FPC Holdings N.V. (FPC). Before and after May 23, 1991, FPC held control (indirectly) of USB Holdings Inc. (USB) which owned California real property. Also, before and after May 23, 1991, the same parent corporation, First Pacific Investments Ltd. (FPI) held indirect control of FPC. Although FPI held indirect control of FPH and FPBH after May 23, 1991, it did not hold control of such corporations prior to that date. Attached are organization charts showing the corporate structure before and after May 23, 1991.

As you know, Revenue and Taxation Code section 64, subdivision (c) provides that when a corporation obtains control in any corporation through the purchase or transfer of corporate stock, the purchase or transfer of that stock shall be a change of ownership of the property of the corporation in which the controlling interest is obtained. Property Tax Rule 462.180, subdivision (d)(1) more specifically provides that a change in ownership of the property of an acquired corporation occurs when any corporation obtains direct or indirect ownership or control of more than 50 percent of the voting stock in any corporation which is not a member of the same affiliated group of corporations.

That is what happened here when FPH and FPBH acquired control of FPC. In so doing FPH and FPBH obtained indirect ownership or control in USB.

The issue you raise is similar to the issue decided in Kraft Inc. v. County of Orange (1990) 219 Cal.App.3d 1104.

In that case, two corporations, Kraft and Dart, formed a new corporation DKI. DKI then formed two subsidiaries which were merged into Dart and Kraft which resulted in DKI obtaining all the stock of Kraft and Dart. Kraft, which owned real property, and Dart continued to operate as separate subsidiaries of DKI.

As part of the transaction, the Kraft and Dart shareholders received shares of DKI stock with the former Kraft shareholders receiving 51.5 percent and the former Dart shareholders receiving 48.5 percent.

Kraft argued that no change in control occurred because the Kraft shareholders became the majority shareholders of DKI and, therefore, indirectly continued to control Kraft. In effect, Kraft argued that the court should look through DKI to the shareholders who still control Kraft.

The court rejected that argument. While acknowledging that the same shareholders did maintain control, the court pointed out that section 64, subdivision (c) "provides for reassessment when a new entity obtains control whether directly or indirectly." (Id. at p. 1108.)

The court further stated beginning on page 1109:

Thus the general rule is that the transfer of corporate stock is not deemed a transfer of the real property of a legal entity because the separate legal entity still owns the property. Section 64, subdivision (c), as an exception to that general rule, reflects the "ultimate control" theory, which looks through the title holder to the entity ultimately responsible. (Citation.) The ultimate control theory, however, does not require, as Kraft contends, that we are to ignore all intermediary entities and look only to the shareholders of the parent company which indirectly controls the title-holding subsidiary corporation.

In our view, the principles of the Kraft case apply equally to the facts of this case in that new corporations obtained indirect ownership or control in USB and under the ultimate control theory, there is no requirement to look through FPH or FPBH to those who indirectly held control of USB both before and after the May 23, 1991 acquisition by FPH and FPBH.

Accordingly, since FPH, FPBH, and FPC were not affiliated corporations and since section 62, subdivision (a)(2) is not applicable, the May 23,

1991 acquisition was a change in ownership under section 64, subdivision (c) and Property Rule 462.180, subdivision (d)(1).

Erin Eisenlauer

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Att.

cc: Mr. John Hagerty - MIC:63

Mr. Dick Johnson - MIC:64

Ms. Jennifer Willis - MIC:70

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